

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
)  
Interconnection and Resale )  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS OF BELL SOUTH**

BellSouth Corporation ("BellSouth"), on behalf of its wireless affiliates and subsidiaries, hereby replies to the comments submitted in response to the Commission's *Public Notice*, DA 97-2558, CC Docket 94-54 (December 5, 1997). BellSouth concurs with the vast majority of commenters, including incumbent CMRS providers, PCS licensees, and various CMRS industry associations, that the FCC should not intervene in the automatic roaming marketplace.<sup>1</sup>

**DISCUSSION****I. THE RECORD DOES NOT SUPPORT ADOPTION OF AN AUTOMATIC ROAMING REQUIREMENT**

In August 1996, Commission indicated that "the original record [in this docket] does not present a basis for us to adopt automatic roaming rules" and acknowledged that "most commenters supported our tentative decision to leave roaming to market forces."<sup>2</sup> Nevertheless, the Commission

<sup>1</sup> BellSouth Comments at 1-15 (Jan. 5, 1998); AirTouch Communications, Inc. Comments at 1-12 (Jan. 5, 1998); American Mobile Telecommunications Association, Inc. Comments at 1-4 (Jan. 5, 1998); Centennial Cellular Corporation Comments at 1-5 (Jan. 5, 1998); CTIA Comments at 14 (Jan. 5, 1998); GTE Comments at 1-6 (Jan. 5, 1998); Nextel Communications, Inc. Comments at 1-5 (Jan. 5, 1998); PCIA Comments at 2-4 (Jan. 5, 1998); Rural Telecommunications Group ("RTG") Comments at 2-3 (Jan. 5, 1998); Sprint Spectrum Comments at 1-3 (Jan. 5, 1998); Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services (collectively "SBMS") Comments at 1-8 (Jan. 5, 1998); 360° Communications Company Comments at 1-5 (Jan. 5, 1998); United States Cellular Corporation ("USCC") Comments at 1-7 (Jan. 5, 1998).

<sup>2</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11

solicited additional information regarding the need for automatic roaming.<sup>3</sup> In response, only four parties submitted comments alleging that an automatic roaming requirement was necessary.<sup>4</sup> The vast majority of commenters demonstrated that there was no need for Commission intervention.

Despite the dearth of evidence regarding the need for automatic roaming, on December 5, 1997, the Commission again solicited comments regarding the need for an automatic roaming requirement. Consistent with the comments filed at every other stage of this proceeding, the vast majority of parties opposed an automatic roaming requirement. Only six parties supported the imposition of such a requirement, which would supplant the natural operation of competitive market forces.<sup>5</sup> Importantly, only four PCS licensees supported an automatic roaming requirement.<sup>6</sup>

One of these PCS licensees, Omnipoint, urges the Commission to adopt an automatic roaming rule but provides no evidence that it has been unable to negotiate such agreements in the absence of a rule. To the contrary, Omnipoint states that it has entered into roaming agreements with more than 70 CMRS providers.<sup>7</sup> Omnipoint merely claims that an automatic roaming rule is

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F.C.C.R. 9462, 9472 (1996).

<sup>3</sup> *Id.*

<sup>4</sup> See Alliance of Independent Wireless Operators (“AIWO”) Comments at 6-19 (Oct. 4, 1996); Integrated Communications Group Corporation Comments at 1-2 (Oct. 4, 1996); Radiofone, Inc. Comments at 1-2 (Oct. 4, 1996); Western Wireless Corporation Comments at 2-13 (Oct. 4, 1996).

<sup>5</sup> AT&T Wireless Services, Inc. Comments at 1-9 (Jan. 5, 1998); Cincinnati Bell Wireless Comments at 1-5 (Jan. 5, 1998); Meretel Communications, L.P. Comments at 1-3 (Jan. 5, 1998); Omnipoint Communications, Inc. Comments at 1-6 (Jan. 5, 1998); Southern Company Comments at 5 (Jan. 5, 1998); Telecommunications Resellers Association (“TRA”) Comments at 2-5 (Jan. 5, 1998).

<sup>6</sup> These PCS licensees were AT&T Wireless, Cincinnati Bell Wireless, Meretel Communications, and Omnipoint Communications, Inc.

<sup>7</sup> Omnipoint Comments at 6.

necessary because automatic roaming is impossible across networks using different standards.<sup>8</sup> Omnipoint acknowledges, however, that the need for an automatic roaming requirement would cease once dual mode handsets become available.<sup>9</sup> While such phones may not yet be available for Omnipoint's system, many other PCS providers are deploying dual band/dual mode phones.<sup>10</sup> Accordingly, Omnipoint's comments should not provide a basis for imposing an automatic roaming requirement.

Similarly, Cincinnati Bell's comments present no basis for imposing such a requirement. Although Cincinnati Bell urges the Commission to adopt an automatic roaming rule, it provides no evidence that it will be unable to negotiate such agreements in the absence of Commission intervention. According to Cincinnati Bell, it "is just entering the discussion stages with incumbent operators for roaming services."<sup>11</sup>

AT&T Wireless also urges the Commission to adopt a limited automatic roaming requirement but provides no evidence that automatic roaming agreements generally could not be negotiated in the absence of such a requirement. To the contrary, AT&T Wireless claims that it has experienced difficulty obtaining *only* those agreements that would permit their subscribers to "roam" in markets where AT&T itself is authorized to provide service.<sup>12</sup> The Commission has never

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<sup>8</sup> Omnipoint Comments at 1-5. *Accord* TRA Comments at 3-4.

<sup>9</sup> Omnipoint Comments at 8 ("Of course, where multi-mode handsets provide compatibility between two or more technologies, automatic roaming should be available on a non-discriminatory basis.").

<sup>10</sup> *See* AT&T Wireless Comments at 3 ("AT&T has supplied its customers with dual mode/dual band handsets that will allow customers to move seamlessly from AT&T's digital PCS systems to the analog or digital systems of cellular carriers."); Cincinnati Bell Comments at 5 ("Dual band, dual and tri-mode phones are now available. Signaling networks and technologies have advanced to the point where cross-system and cross-technology hand-offs have been demonstrated.").

<sup>11</sup> Cincinnati Bell Comments at 6.

<sup>12</sup> AT&T Wireless Comments at 1-11. *Accord* Cincinnati Bell Comments at 4.

required CMRS carriers to enter into such “home roaming” agreements. Instead, the Commission has authorized competing in-market carriers to resell the service of incumbent providers. As discussed *infra*, home roaming agreements undermine competition and carriers may rightfully decline to enter into such arrangements.

No “new entrant” provides evidence that incumbents are generally unwilling to enter into automatic roaming agreements.<sup>13</sup> Conversely, Sprint Spectrum, a new PCS operator, and incumbent CMRS operators demonstrate that automatic roaming agreements between PCS and incumbent licensees are generally available.<sup>14</sup> According to Sprint Spectrum, it has only encountered difficulties in negotiating automatic roaming agreements with a handful of incumbents *regarding home roaming*.<sup>15</sup> Similarly, the Personal Communications Industry Association stated:

Despite fierce competition for customers between incumbents and new entrants, no carriers to date have brought to PCIA’s attention any situations where existing carriers have refused to negotiate automatic roaming agreements, negotiated in bad faith, or insisted upon discriminatory contractual provisions.

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<sup>13</sup> See AT&T Wireless Comments at 1-11; Cincinnati Bell Comments at 6; Merotel Comments at 1-4; Omnipoint Comments at 1-5.

<sup>14</sup> Sprint Spectrum Comments at 2 (stating that it has encountered difficulties in roaming negotiations with only a handful of cellular carriers *regarding home roaming*); BellSouth Comments at 8-12 (detailing various automatic roaming agreements); CTIA Comments at 3-8 (discussing automatic roaming trends); GTE Comments at 3 (“GTE has executed automatic roaming agreements with at least nine separate broadband PCS providers”); RTG Comments at 2 (indicating that its members have never been denied automatic roaming agreements by larger carriers and that no PCS entrants have requested automatic roaming agreements from its members); SBMS Comments at 2-5 (summarizing its automatic roaming negotiations); 360° Comments at 2 (indicating that it has entered into at least five automatic roaming agreements with PCS carriers and is negotiating twelve more agreements); USCC Comments at 7 (“USCC welcomes agreements with all PCS providers on all frequency blocks in all locations”).

<sup>15</sup> Sprint Spectrum Comments at 2.

Accordingly, given the record in this proceeding and the FCC's recognition that "all regulation[] necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted,"<sup>16</sup> an automatic roaming requirement should not be adopted.

## **II. HOME ROAMING IS ANTI-COMPETITIVE**

As stated above, no new entrant claims that incumbent CMRS licensees are unwilling to negotiate automatic roaming agreements generally. Instead, a handful of new entrants urge adoption of an automatic roaming rule that would force incumbents to enter into home roaming agreements.<sup>17</sup> As BellSouth demonstrated in its comments, however, home roaming agreements are anticompetitive and may run afoul of the Sherman Act:

Mandatory automatic "home roaming" also raises serious anticompetitive dangers. In particular, an automatic roaming agreement between two competitors in a market will likely involve the mutual setting of roaming rates in a way that will inevitably lessen price competition and may run afoul of antitrust pricing rules. At a minimum, such activity would be of questionable legality under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2. A home roaming agreement also would raise additional antitrust questions to the extent it effectuated a diminution in product differentiation by, for example, eliminating competition on the basis of the two systems geographic coverage. Accordingly, it is questionable whether meaningful automatic home roaming agreements can lawfully be negotiated.<sup>18</sup>

Cellular carriers are competitively disadvantaged *vis-a-vis* PCS providers because PCS licensees are authorized to serve larger areas. As a result, cellular customers have smaller home markets, areas where a customer does not have to roam. One way a cellular carrier may differentiate

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<sup>16</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order*, 11 F.C.C.R. 18455, ¶ 14 (1996).

<sup>17</sup> See AT&T Wireless Comments at 1-11; Cincinnati Bell Comments at 4; Meretel Comments at 3. Sprint Spectrum requests that the refusal to enter into home roaming agreements be deemed unjust and unreasonable discrimination. Sprint Spectrum Comments at 5-7.

<sup>18</sup> BellSouth Comments at 5-6.

itself from its PCS competitor is coverage.<sup>19</sup> Whereas cellular carriers have expended considerable resources in expanding coverage to rural areas, many PCS licensees have indicated that they do not want to spend the resources to build out such areas.<sup>20</sup> While this is certainly a business decision PCS carriers are entitled to make, it should not be made at the expense of cellular providers who expended the resources necessary to cover rural areas.

The Commission has required cellular providers to allow their in-market PCS competitors to resell cellular service while the PCS systems are being built-out. If a PCS licensee is concerned about “home” market coverage, it can resell cellular service until its system is built out to its satisfaction. Once the PCS licensee chooses to become a direct facilities-based competitor, however, it must do just that — compete based on a facilities basis. Requiring a cellular carrier to provide automatic roaming to an in-market competitor undermines facilities-based competition. If automatic home roaming is required, PCS licensees will not have to expand their networks into rural areas.

Automatic roaming agreements are generally premised on reciprocity.<sup>21</sup> Thus, if a PCS carrier requests an automatic roaming agreement from a cellular carrier, a cellular carrier will generally enter into such an agreement if its subscribers will benefit from the arrangement. There

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<sup>19</sup> Coverage is one of the ways cellular carriers have traditionally differentiated themselves from one another.

<sup>20</sup> See Mobile Phone News, *AT&T's True PCS Launches on East Coast Will Bring More Revenue to Incumbent Cellular Carriers*, Phillips Business Information, Inc. (Oct. 20, 1997); see also PCS Week, *GSM Turns to Analog Roaming to Expand Outside Urban Cores*, Phillips Business Information, Inc. (Dec. 3, 1997).

<sup>21</sup> See BellSouth Comments at 5, 8-9. Contrary to the assertions of TRA, BellSouth believes that the absence of reciprocity is a reasonable reason for refusing to enter into automatic roaming agreements with resellers or facilities-based providers of CMRS service. See TRA Comments at 5-7. Moreover, the Commission has made clear that its resale rules were not adopted to ensure a resale market. See *Cellular Communications Systems*, 86 FCC 2d 469, 511 (1986) (subsequent history omitted); *First Report and Order*, 11 F.C.C.R. at 18458, 18462-63. Thus, TRA's claims that automatic roaming is necessary to ensure the survival of resellers is unavailing. See TRA Comments at 7-8.

is no reciprocity with regard to home roaming — the carrier with superior coverage receives no benefit and its competitive position in the marketplace is diminished. The lack of reciprocity explains why home roaming agreements were not previously developed in the cellular industry.

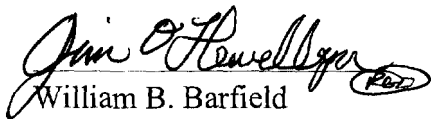
In sum, a rule requiring home roaming would hinder the ability of CMRS licensees to compete with one another. Accordingly, the Commission should clarify that CMRS carriers can lawfully refuse to enter into home roaming agreements.<sup>22</sup> Such a decision is supported by the record which establishes that PCS licensees have had little difficulty attracting subscribers without any roaming requirements, let alone a home roaming requirement.<sup>23</sup>

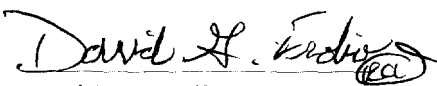
### CONCLUSION

For the foregoing reasons, the Commission should not adopt an automatic roaming requirement.

Respectfully submitted,

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January 20, 1998

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<sup>22</sup> Accord AirTouch Comments at 3, 12-16.

<sup>23</sup> See BellSouth Comments at 8.

### **CERTIFICATE OF SERVICE**

I, Crystal M. Clay, hereby certify that on this 20th day of January 1998, copies of the foregoing "Reply Comments of BellSouth" in CC Docket No. 94-54 were served by first class United States mail, postage prepaid, on the following:

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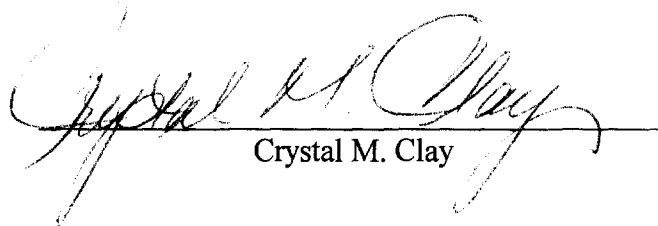
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